IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ARTIS COBB,	)	
	)	
Petitioner,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 03-3400-KHV**
L.E. BRUCE, et al.,	)	
	)	
Respondents.	)	
	)	

ORDER

Pursuant to 28 U.S.C. § 2254, Artis Cobb seeks a writ of habeas corpus based on violation of his Fifth Amendment privilege against self-incrimination as incorporated through the due process clause of the Fourteenth Amendment. For reasons stated below, the Court denies the petition.

Background

On July 24, 1994, Jade Blount returned home from military exercises to find his wife, Kasey Blount, and her infant daughter, Alannah, dead in their apartment in Junction City, Kansas. Kasey's decomposing body was on its back on the living room floor, naked below the waist. Kasey had a baby sock in her throat and a pillow under her leg. A cushion from a nearby loveseat and a knife were on the floor. An autopsy determined that Kasey had been asphyxiated. Alannah had died of dehydration in her crib upstairs.

Investigators found physical evidence at the scene, including semen from Keith Jones, semen from Javis Devore and a fingerprint from James Battle. All three men ultimately admitted having sex with Kasey in her apartment. Police investigated each of these men as well as Jade Blount, but authorities never charged any of them with a crime. Keith Jones told police that on Friday, July 22, 1994, "Scoop" had relayed a message to him from Kasey Blount. Jones later identified "Scoop" as petitioner, Artis Cobb.

The case remained unsolved for years. In August of 1997, Special Agent Larry Thomas, who was Chief of the Cold Case Squad for the Kansas Bureau of Investigation ("KBI"), began working on the case with KBI Special Investigator Raymond Lundin. They went to Georgia to interrogate Cobb while he was in jail on an unrelated drug charge. At the beginning of the interview, Lundin read Cobb his Miranda rights, and Cobb agreed to speak with the agents. Lundin and Thomas interviewed Cobb from 10:00 a.m. to 5:30 p.m. with a few breaks including lunch. Thomas testified that neither he or Lundin spoke harshly or acted in an aggressive or threatening manner.

During the interview, Cobb told Lundin that he had found Jesus. Cobb held a religious book during the interview and at one point got on his knees and appeared to pray. Lundin and Thomas did not discuss the specifics of the crime scene with Cobb, but they showed Cobb a reward poster which included the fact that Kasey had been suffocated. At first, Cobb denied knowing Kasey or being in Junction City, but he later said he had seen her at the barracks there. He did not make any incriminating statements until after Lundin told him that Jones' testimony would "bury him." After this, Cobb remained quiet with his head down and Lundin began to introduce scenarios of how the homicide might have happened. Lundin suggested that it might have been part of a gang initiation.

Cobb then told the agents that he had participated in an initiation for a group of soldiers called "the Pimps" who lived at the barracks. He said that after he drank "blood" made of grenadine and alcohol, Andrew Jones (not Keith Jones) took him to Kasey's apartment. Cobb said that Andrew Jones forced Kasey to undress and then forced Cobb to have sexual intercourse with her. Andrew Jones then told Cobb to hold Kasey's arms while Jones held a pillow over her face until she stopped moving. Cobb said that he complied. Andrew Jones then told Cobb to wait for him in the car. When Andrew Jones joined Cobb a

few minutes later, he told Cobb that the initiation was complete and said, "Now you a pimp, nigger."

Cobb drew a diagram of the basic layout of the crime scene, locating the furniture and the body in the room. He also wrote a poem for Kasey's mother. Near the end of the interview, Cobb wrote a four-page statement describing his involvement. At Lundin's suggestion, Cobb included a statement that "Agent Lundin of the Kansas Bureau of Investigation has advised me of all my rights and I am providing the following information voluntarily." The agents then reviewed the statement with Cobb and ended the interview.

A few days later, Lundin and Thomas returned to re-interview Cobb. Cobb handed them a letter which stated:

> After speaking with various family members, I've come to a couple of conclusions; One being, I made a very detrimental mistake by taking the actions I took with you two agents. . . . I'm referring to my writing the statement, which could very well be "self-incriminating." Due to the fact that I feel as though I was coerced into writing the statement, I wish to withdraw it in its entirety. Out of extreme fear and lack of understanding, I created a scenario in my mind, in order to satisfy the two (2) agents, and I placed it on paper. It has no meaning nor is any of it true. Please disregard the entire contents of the statement. Anything to be discussed in future situations has to be done in the presence of my attorney. Thanks for your time. Respectfully, Artis T. Cobb.

After the agents read the letter, Cobb said that he wanted to explain it. Lundin again recited Cobb's Miranda rights, and Cobb signed a written waiver of his rights and agreed to speak with the agents. Cobb said that he did not want to withdraw the part of the statement about knowing Kasey; he just wanted to withdraw the part about raping and murdering her. The agents showed Cobb photographs of both Andrew Jones and Keith Jones. Cobb identified Andrew Jones. Although he could not name Keith Jones, he recognized him as someone he had seen around Junction City.

Almost two years later, Lundin contacted Bill Pfeil of the Florida Department of Law Enforcement

and asked for help investigating Cobb. Cobb, who was then out of prison, met with Pfeil and Lundin in July of 1999. At the beginning of this interview, Cobb said that he went by the nickname "Scooby." Pfeil advised Cobb of his Miranda rights, and Cobb indicated that he understood them. Cobb agreed to talk to Lundin and Pfeil about Kasey.

Pfeil then falsely told Cobb that new DNA technology had placed him at the crime scene "hook, line, and sinker." Pfeil made similar comments several times during the interview. After Cobb repeatedly stated that he could not remember being at Kasey's apartment, the following exchange took place between Cobb and Pfeil:

> Q. Well, if these guys arrest you for this is it going to, is it going to jog your memory?
>
> A. I don't know.
>
> Q. Or what?
>
> A. I don't know. I mean, I told those guys right then and there, you know: Are you guys going to arrest me or anything? You know what I'm saying.
>
> Q. That's all in due time.
>
> A. Well, I mean, I don't remember anything about this situation. And if due time ain't today, then I would rather have a lawyer here present with me for the rest of this, okay?
>
> Q. Give me a minute here.
>
> A. So you are going to arrest me today for it, huh?
>
> Q. Probably so.
>
> (WHEREUPON, Mr. [Pfeil's] departure was noted for the record.)
>
> A. Look, man–
>
> Q. (By Mr. [Pfeil]) Probably so.

A. --let's talk some more, please, for me, because I, I can't deal with it--

(WHEREUPON, Mr. [Pfeil's] presence was noted by the reporter.)

A. --I truly can't.

Q. (By Mr. [Pfeil]) Okay, Artis, what I have got here is an arrest warrant from the State of Kansas. It's charging you with six counts.

A. Six counts of what?

Q. Six counts.

(WHEREUPON, Mr. [Pfeil's] departure was noted by the reporter.)

A. No, no. We can talk some more, please. Let's talk some more. Let me try to remember some of this, I mean.

Lundin then came into the room and said: "Now, I was listening outside the door and I heard you say, you know, you don't want to talk no more about this thing, that you wanted a lawyer. Would you like to talk some more about this with us?" Cobb responded: "We can talk some more about this. Let's do."

Lundin then interrogated Cobb, making numerous religious references. For example, Lundin had the following exchange with Cobb:

Q. Do you think the Lord hears?

A. Oh, yeah.

Q. Do you think he's listening now?

A. Yeah.

Q. And would the Lord prefer that we spoke the truth or that we spoke lies?

A. We spoke the truth, always.

Q. Do you think he's pleased with what he's hearing from your mouth right now?

> . . . And the Lord don't want no half-baked Christians. He don't want no half-born--and he's not responsible for lies.
>
> A. That's true.
>
> Q. He'll give us the truth. We are the ones that provide the lies. That's where we are, that's where we went wrong long, long, long ago and I know it hurts to bring this out, but I think I know in your heart you want to tell me the truth so bad that it's just. . . .

At other times, Cobb invoked religious themes:

> A. I had no reason to listen to what they was speaking and I look at them as though it was the devil, you know, trying to make a bargain with me. But I got news for them, they can't have this life, they can't have this soul because I'm planted now. I'm planted, ain't going to and I know that He's going to see me through this.
>
> Q. Okay. That's where your trust should be.
>
> A. That's where all of my trust is.
>
> Q. You know what they say--(Tape Inaudible.)
>
> A. And one of my favorite little passages is that He would never put a burden on you that you can't bear. He'll never give you a load--it's not a load for me because I'm not carrying it by myself. I'm depending on Him to help me carry this. If He don't want my help I'll let Him carry it his own self because I have that much trust in Him and I know that something good is going to come out of this. I know that something good is going to come out of this.
>
> Q. In and--
>
> A. The Lord loves me and I love Him too so that's where all of my trust is. I mean, I didn't mean to back out of that statement but I only backed out of that statement because I was surrounded by nothing but evil in that jailhouse.

Ultimately Cobb admitted that on the night Kasey was killed, he was drinking with members of the Pimps, including Andrew Jones. After Cobb was intoxicated, he drove to Kasey's apartment with Andrew Jones. Cobb sat downstairs and drank while Andrew Jones went upstairs with Kasey. When Andrew Jones and Kasey came downstairs, she looked upset. Andrew Jones told her that now she was "gonna give my boy

some of this." When she resisted, Andrew Jones grabbed Kasey and held her down to the floor and told Cobb to have sex with her or he would kill him. Cobb complied. Finally, when Lundin asked Cobb how Kasey died, Cobb responded: "Ms. Kasey died with a pillow over her face, a pillow that was held by me, but I never meant to do it." Cobb said that he did not know Alannah was upstairs when Kasey died.

On November 24, 1999, the Geary County District Attorney charged Cobb in the killing of Kasey and Alannah Blount.

Motion To Suppress

Before trial, Cobb moved to suppress his interview statements as the products of coercive and deceptive practices by the agents and violations of his right to counsel. The district court conducted a hearing and overruled the motion.

As to the statements in August of 1997, the district court found that Cobb had made the statements voluntarily and with full knowledge of his Miranda rights. The court found that Cobb had reinitiated communication with the agents after giving them the letter which withdrew his earlier statement and requested counsel, and that he had voluntarily waived his right to counsel orally and in writing by again waiving his Miranda rights.

As to the statements in July of 1999, the district court found that Cobb had made an ambiguous request for counsel which did not require the agents to further inquire whether he wanted counsel. Cobb also reinitiated communication by asking if he was going to be arrested and begging the officers to continue speaking with him. Further, the court found that Lundin clarified Cobb's ambiguous request for counsel by asking Cobb whether he wanted to continue speaking with them even though he had earlier said that he wanted a lawyer. The court also found the statements in July of 1999 were voluntary under the totality of

the circumstances, in spite of the heavy emphasis on religion and redemption. The court found that Cobb was not suffering from any mental condition which impaired his ability to understand what was happening, and that the manner and duration of the interrogation was not unduly restrictive. The court found that Cobb did not ask to communicate with the outside world, that he was an adult male of average intellect who had been in the army and had experience with the criminal justice system, and that the officers were fair in conducting the investigation. The Court found that the untruthful statements about nonexistent DNA evidence and incriminating evidence from other persons were merely "bluff" which did not render Cobb's statements involuntary.[1]

Evidence At Trial

At trial, the government introduced evidence of Cobb's incriminating statements. An expert for defendant, Dr. Richard Leo, testified that police had used certain interrogation techniques which tend to produce false confessions. Leo testified that these techniques included telling Cobb that they knew he had committed the crime, confronting him with irrefutable evidence of his guilt, suggesting that they wanted to help him, suggesting the gang initiation scenario, appealing to Cobb's moral and religious sense, using maximization and minimization, leading him to believe that they would meet with the district attorney and repeatedly asking Cobb to remember what had happened and to help himself. Leo explained that some of the techniques which the interrogators had used in this case have contributed to false confessions.

---

[1] In Cobb's direct appeal, the Kansas Court of Appeals set forth a thorough description of the interrogations. See State v. Cobb, 30 Kan. App. 2d 544, 43 P.3d 855 (2002). To the extent that Cobb has not rebutted these facts by clear and convincing evidence, the Court has relied on the state court factual determinations. See 28 U.S.C. § 2254(e)(1) (state court determination of factual issue presumed correct and petitioner has burden of rebutting presumption by clear and convincing evidence).

Dr. Erik Krag Mitchell, who performed the autopsies on the victims, testified that Kasey died of asphyxiation from a sock in her throat which obstructed her airway. Mitchell noted bruising on her upper chest and neck, probably caused by manual strangulation. Mitchell also testified that after the autopsy, police asked him to examine photographs of the crime scene. At that time he noticed a pattern injury to Kasey's face and neck, consistent with a textile containing a matching pattern being pressed against those parts of her body.

Mitchell testified that Alannah had died as a result of homicide. Mitchell explained that Alannah was in a crib, was too young to care for herself, and that no one took care of her because someone had killed her mother.

Kelly Robbins, a KBI forensic scientist, testified that no DNA evidence implicated Cobb.[2] Robbins stated that under several scenarios, a sexual assault could leave no evidence of the perpetrator's bodily fluids: (1) no penetration; (2) penetration without ejaculation; (3) penetration with only a small amount of ejaculate; (4) ejaculation outside the victim's body in an unidentified location; (5) no collection of semen; or (6) deterioration of the semen before testing.

Chandra Scott, a friend of Cobb's, testified that around the time of the crimes, Cobb went to her home to talk to her. He was upset and said he was seeing a woman married to a military man who had a baby girl. According to Cobb, he and this woman "got into it" and he choked her. Scott and Cobb were smoking marijuana during this conversation. Scott also recalled that she had dropped Cobb off at Kasey's apartment complex on one occasion so that he could visit his girlfriend.

---

[2] Indeed, no physical evidence connected Cobb to the scene of the crime.

Defense witness Brent Turvey, a private forensic crime scene analyst, testified that he had visited the exterior of the crime scene and reviewed over a hundred reports and documents regarding the case. When defense counsel asked what conclusions Turvey had reached, the prosecutor objected on the ground that the testimony would invade the province of the jury and that it lacked foundation. Defense counsel proffered a report by Turvey which highlighted 12 discrepancies between the forensic evidence and Cobb's statements. The trial court excluded Turvey's report, stating that "[e]very one of these findings ha[s] already been in evidence through other witnesses, as far as the Court can find or recalls. And the – these are arguments to the jury, and the Court doesn't believe that any of these would materially aid the jury in their determination of guilt or innocence in this case."

On April 7, 2000, a jury found Cobb guilty of voluntary manslaughter of Kasey Blount in violation of K.S.A. § 21-3403, and involuntary manslaughter of Alannah Blount in violation of K.S.A. § 21-3404. On May 16, 2000, the court sentenced Cobb to 98 months in prison.

Cobb appealed his conviction to the Kansas Court of Appeals, arguing, inter alia, that the trial court had erred in admitting his statements to law enforcement because the statements were coerced and therefore involuntary under the Fifth Amendment and the due process clause of the Fourteenth Amendment.[3] On April 12, 2002, the Kansas Court of Appeals affirmed Cobb's convictions. State v. Cobb, 30 Kan. App.

---

[3] On appeal, Cobb also asserted that the trial court erred in (1) admitting his statements to law enforcement because the statements were made in violation of his Sixth Amendment right to counsel; (2) allowing testimony that Alannah's death was a homicide; (3) excluding expert testimony on the crime scene; (4) finding sufficient evidence of voluntary manslaughter where the record contained no evidence that the killing was done during the heat of passion or upon a sudden quarrel; and (5) admitting Scott's testimony that Cobb had told her that he had choked a woman, because the evidence was not admissible under K.S.A. § 60-455. The Kansas Court of Appeals rejected each of these arguments. See State v. Cobb, 30 Kan. App. 2d 544, 43 P.3d 855 (2002).

2d 544, 43 P.3d 855 (2002). On September 24, 2002, the Kansas Supreme Court denied review.

On October 9, 2003, Cobb filed a petition for writ of habeas corpus in this Court, asserting that the trial court erred in admitting his statements to law enforcement because the statements were coerced and therefore involuntary under the Fifth Amendment privilege against self-incrimination and the due process clause of the Fourteenth Amendment.

Standard Of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. 104-32, 110 Stat. 1214, (codified in relevant part at 28 U.S.C. § 2254) governs the Court's review. See Paxton v. Ward, 199 F.3d 1197, 1204 (10th Cir. 1999) (AEDPA applies to habeas petitions filed after April 24, 1996 regardless of date of criminal trial forming basis of conviction). Under Section 2254, as amended by AEDPA, the Court may not issue a writ of habeas corpus with respect to any claim which the state court adjudicated on the merits unless that adjudication resulted in a decision:

> (1) . . . that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> (2) . . . that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. 2254(d)(1)-(2). The Court may issue a writ of habeas corpus under the "contrary to" clause only if (1) the state court arrived at a conclusion opposite to that reached by the United States Supreme Court on a question of law, or (2) the state court decided a case differently than the Supreme Court on a set of materially indistinguishable facts. Williams v. Taylor, 529 U.S. 362, 405-06 (2000). Under the "unreasonable application" clause, the Court may grant habeas relief if the state court "correctly identifies the governing legal rule but applies it unreasonably to the facts of a prisoner's case." Id. at 407-08. The

Court may not issue a writ simply because it concludes in its independent judgment that the state court applied clearly established federal law erroneously or incorrectly; the application must have been objectively unreasonable. Id. at 409-11.

The Court presumes "that factual determinations made by the state court are correct, and the petitioner bears the burden of rebutting this presumption with clear and convincing evidence." Martinez v. Zavaras, 330 F.3d 1259, 1262 (10th Cir. 2003) (citing 28 U.S.C. § 2254(e)(1)) and Fields v. Gibson, 277 F.3d 1203, 1221 (10th Cir. 2002)). This presumption does not extend to legal determinations or to mixed questions of law and fact. Id. (citing Herrera v. Lemaster, 225 F.3d 1176, 1178-79 (10th Cir. 2000)). That is, the "deferential standard of review does not apply if the state court employed the wrong legal standard in deciding the merits of the federal issue." Id. (quoting Cargle v. Mullin, 317 F.3d 1196, 1202 (10th Cir. 2003)). Ultimately, this Court's review of the state court proceedings is quite limited, as Section 2254(d) sets forth a highly deferential standard for evaluating state court rulings. Anderson v. Mullin, 327 F.3d 11148, 1152 (10th Cir. 2003).

Analysis

Cobb's habeas petition raises only one issue: whether the trial court erred in admitting his statements to law enforcement because the statements were coerced and therefore involuntary under the Fifth Amendment and the due process clause of the Fourteenth Amendment. In that regard, Cobb asserts that the Kansas Court of Appeals did not apply the correct legal standard to its analysis of this issue, because it gave deference to the trial court finding on the question of voluntariness, which is a legal question that requires independent appellate determination. See Arizona v. Fulminante, 499 U.S. 279, 287 (1991); Miller v. Fenton, 474 U.S. 104, 110 (1985) (ultimate issue of voluntariness is legal question requiring

independent federal determination). On Cobb's direct appeal, the Kansas Court of Appeals articulated the standard of review as follows:

> When a trial court conducts a full hearing on the admissibility of an extrajudicial statement by an accused, determines the statement was freely, voluntarily, and intelligently given, and admits the statement into evidence at the trial, an appellate court accepts that determination if there is substantial competent evidence to support the trial court's determination. [Citation omitted.] After a trial court has determined the confession was voluntary, an appellate court will not reweigh the evidence. [Citation omitted.] State v. Lane, 262 Kan. 373, 382-83, 940 P.2d 422 (1997).

Cobb, 30 Kan. App. 2d at 556, 43 P.2d at 863. Petitioner asserts that this standard of review is more deferential than that set out by the Supreme Court in Fulminante and Miller. See also United States v. Glover, 104 F.3d 1570, 1579 (10th Cir. 1997) (when defendant challenges use of statements on ground that they were involuntary, appellate court must examine entire record and make independent determination of ultimate issue of voluntariness); United States v. Chalan, 812 F.2d 1302, 1307-08 (10th Cir. 1987) (trial court rulings regarding subsidiary factual questions, such as whether police intimidated or threatened suspect or whether suspect was particularly susceptible to police coercion, subject to review under clearly erroneous standard). Recently, the Kansas Supreme Court has set forth a refined statement of the relevant standard of review, as follows:

> In reviewing a trial court's decision regarding suppression, an appellate court reviews the factual underpinnings of the decision by a substantial competent evidence standard and the ultimate legal conclusion by a de novo standard with independent judgment. State v. Sanders, 272 Kan. 445, 452, 33 P.3d 596 (2001), cert. denied 536 U.S. 963 (2002). This court does not reweigh evidence, pass on the credibility of witnesses, or resolve conflicts in the evidence. State v. Washington, 275 Kan. 644, 669, 68 P.3d 134 (2003).

State v. Mays, 277 Kan. 359, 372, 85 P.3d 1208, 1218-19 (2004). Although the Kansas Court of Appeals did not specifically mention de novo review of ultimate legal conclusions, its decision on Cobb's

direct appeal appeared to engage in such a review. Further, it applied the correct legal standard to the merits of Cobb's claim.

The Kansas Court of Appeals ruled as follows on the motion to suppress Cobb's confession:

> In State v. Wakefield, 267 Kan. 116, 977 P.2d 941 (1999), the defendant appealed the district court's refusal to suppress statements he made during an interrogation in which officers falsely represented that they had information and evidence implicating the defendant in a murder. The Kansas Supreme Court used the following factors to determine whether the confession was voluntary under the totality of the circumstances: "(1) the duration and manner of interrogation; (2) the accused's ability upon request to communicate with the outside world; (3) the accused's age, intellect, and background; and (4) the fairness of the officers in conducting the interrogation." 267 Kan. at 126, 977 P.2d 941.
>
> The Wakefield court noted that the questioning officer in Frazier v. Cupp, 394 U.S. 731, 739, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969), falsely told the defendant that his cousin had already confessed. Despite this falsehood, the United States Supreme Court found the misrepresentation was insufficient under the totality of the circumstances to make an otherwise voluntary confession inadmissible. 267 Kan. at 128, 977 P.2d 941.
>
> The Wakefield court found the officers' conduct in that case followed from the State's interest in conducting a thorough and accurate investigation, and such tactics did not make a confession involuntary so long as the statements were otherwise the product of the defendant's own free will. Given the lack of threatening behavior or unfulfilled promises by the officers, the court concluded the misrepresentations did not make the defendant's confession involuntary. 267 Kan. at 127-28, 977 P.2d 941.
>
> Applying the Wakefield factors to this case, we conclude the manner and the duration of the interrogations did not make Cobb's statements involuntary. He was given several breaks during the August 1997 interrogation, and the July 1999 interrogation lasted only 4 hours. Cobb did not complain that he was physically threatened by or that he had received any unfulfilled promises from the agents. He never requested to communicate with the outside world, and, as the district court noted, he was an adult of average intellect who had been in the United States Army and who had previous experience with the criminal justice system. All of the first three factors weigh in favor of voluntariness.
>
> As for the officers' fairness, although the agents in this case did misrepresent the strength of the evidence they already possessed, we believe it is unlikely these misrepresentations overbore Cobb's will under the totality of the circumstances. At times, he was the party who urged the continuation of the conversations. We hold that substantial competent

evidence supports the district court's ruling that the misrepresentations did not render Cobb's statements involuntary.

The agents' manipulation of Cobb through repeated references to his religious beliefs during the July 1999 interview is somewhat more troubling because of the lack of controlling precedent. The agents initiated the topic, although Cobb was all too eager to continue the theme.

No Kansas cases have dealt specifically with whether an interrogator may use religion to appeal to a suspect to make a statement. Cobb relies primarily upon Carley v. State, 739 So.2d 1046 (Miss. App. 1999), in arguing that the religious tone rendered his resulting statements involuntary.

In Carley, a 14-year-old boy with a mental disability admitted to shooting his parents after officers made repeated references to the Lord and told him the only way he could obtain religious salvation and see his parents again was by telling the truth about his sins. Under the totality of those circumstances, the court concluded Carley's will was overborne and his confession involuntary. The officers' invocation of the deity, their references to Heaven and Hell, and their promises of leniency and religious salvation went too far. 739 So.2d at 1054.

Castleberry v. Alford, 666 F.2d 1338 (10th Cir. 1981), had the opposite result in a situation where the defendant was an adult. As police officers drove Castleberry to the station for questioning, they took him for a visit with one of their ministers. The evidence as to exactly how this came to pass was disputed. After Castleberry met privately with the minister, where he prayed and listened to biblical passages about confession and forgiveness, he stated for the first time that he had killed his wife and children.

The Tenth Circuit Court of Appeals upheld the state court's determination that Castleberry's confession was voluntary. The court considered Castleberry's mental capabilities, including his age, his average intelligence, his level of education, and his clean record. The court also found there was no particular misconduct on the part of the officers, and the visit to the minister was not objectionable in and of itself. 666 F.2d at 1341-43.

We view Cobb's case as a close one. Although he was older and more intelligent than the defendant in Carley, the references to religion during his last interview can best be described as constant and pervasive. The agents made the most of their knowledge of his professed faith, gleaned from the August 1997 contact, and Cobb's obvious religious fervor made him vulnerable to coercion when he was urged to consider the effect his failure to confess would have on his salvation.

> We cannot, however, conclude that Cobb's incriminating statements were involuntary. He was an adult, and, even when compared to the defendant in Castleberry, somewhat older and more experienced. Also, as mentioned, he joined into the religious discussion enthusiastically and urged the agents to continue talking to him rather than place him under arrest. In the end, we view the situation as comparable to one in which a police officer is aware that a suspect feels most comfortable when talking to a person who shares his or her opinions on politics. The officer would be permitted to feign agreement with and enthusiasm for the defendant's position and to try to make cooperation in the investigation consistent with the defendant's world view. This tactic would not make resulting incriminating statements involuntary if the suspect was mature and of normal intelligence. We are reluctant to arrive at any holding to the contrary in this case and thereby suggest that persons of deep religious faith should be presumed to be more gullible and easily manipulated than those with deeply held secular beliefs or opinions.

30 Kan. App.2d at 556-559; 43 P.3d at 863-865.[4]

The Kansas Court of Appeals referred to a Kansas case – Wakefield – for relevant factors. But those factors contain the essence of the factors which the United States Supreme Court set out in Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). There, the Supreme Court noted that in determining whether a confession is coerced, courts consider the following factors: (1) defendant's age, intelligence, and education; (2) the length of the detention; (3) the length and nature of the questioning; (4) whether defendant was advised of his constitutional rights; and (5) whether defendant was subjected to physical punishment. Id. The determination of voluntariness is based on the totality of the circumstances; no single factor is determinative. Id.

After reviewing the record de novo, this Court concludes that the Kansas Court of Appeals decision

---

[4] The Kansas Court of Appeals also found that even if the agents' emphasis on religion was so coercive as to make Cobb's statements in July of 1999 involuntary, the trial court's failure to suppress them would be harmless. The Court of Appeals noted that Cobb had already placed himself at the scene, at least as an aider and abettor in Kasey's rape and homicide. The Court of Appeals thus concluded that on the evidence, Cobb would have been found guilty even if his last incriminating statement had not been received into evidence. Cobb, 30 Kan. App. 2d at 559; 43 P.3d at 865.

that Cobb's statements were freely and voluntarily given was not contrary to, nor was it an unreasonable application of, clearly established federal law. At both the Florida and Georgia interviews, officers advised Cobb of his constitutional rights. In each instance, he waived them. In the interviews, Cobb was lucid and responsive to questioning. The record contains no evidence of physical punishment or the threat of physical punishment. At the time of the interviews, Cobb was an adult, had completed the twelfth grade, and had served in the army. Cobb's use of language in the interviews does not suggest that he had limited intellectual functioning. Moreover, Cobb apparently had prior experience with the criminal justice system. Thus the record does not suggest that Cobb was unusually susceptible to coercion because of age or lack of education or intelligence. See Schneckloth, 412 U.S. at 226.

As the Kansas Court of Appeals noted, the agents' manipulation of Cobb through repeated reference to religious beliefs during the interview in July of 1999 is troubling. Cobb, however, does not point to a United States Supreme Court case – or indeed any case – which holds on similar facts that use of religious references renders a confession involuntary.

Cobb's habeas petition does not establish any instance where the state proceedings "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2). Cobb presents no other grounds upon which habeas relief is warranted.

IT IS THEREFORE ORDERED that Cobb's habeas petition be and hereby is **DENIED.**

Dated this 29th day of December, 2004 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge